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CITY AND COUNTY OF SAN FRANCISCO and
HEATHER FONG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANDREW COHEN, and individual;
JAMES LEWIS, an individual,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, HEATHER FONG, an
individual, and DOES 1 - 50,

Defendant(s).

Case No. C07-06208 EMC
Case No. C07-01186 SI

NOTICE OF RELATED CASE

Pursuant to Local Rule 3-12, Defendants hereby give notice that the above-captioned case is related to a case pending in the United States District Court for the Northern District of California before Judge Susan Illston:

Harmston, Cohen, Lewis et al. v. City and County of San Francisco and Chief Heather Fong, USDC Case No. C07-1186 SI.

The *Harmston* action was filed in the superior court for the city and county of San Francisco on August 10, 2006. Plaintiffs' first amended complaint in that action was filed on January 27, 2007 and was removed to the United States District Court on February 28, 2007.

1 This action and the *Harmston* case are related because: (1) they both concern substantially the
 2 same parties --- Plaintiffs Andrew Cohen and James Lewis and Defendants City and County of San
 3 Francisco and San Francisco Police Chief Heather Fong; (2) they both concern substantially the same
 4 event or question – whether Cohen and Lewis have suffered retaliation based on their filing tort
 5 claims and DFEH charges alleging unlawful discrimination; and (3) it appears likely that there will be
 6 an unduly burdensome duplication of labor and expense or conflicting results if the cases are
 7 conducted before different judges.

8 This action was filed on December 12, 2007. Defendants hereby promptly file this Notice of
 9 Related Case.

10 In this action, Plaintiffs allege that they have suffered unlawful retaliation because they filed a
 11 claim with the City, a charge of discrimination with the Department of Fair Employment and Housing
 12 and a civil complaint in the matter of *Harmston, Cohen, Lewis et al. v. City and County of San*
 13 *Francisco and Chief Heather Fong*, USDC Case No. C07-1186SI (Complaint, ¶¶ 9-19, 22-27, 29-34,
 14 36-39). If this action is conducted before a different Judge, conflicting results could occur as to
 15 rulings on the scope of actionable conduct; the applicable limitations period; the extent of damages
 16 recoverable; and the extent to which Plaintiffs exhausted their administrative remedies.

17 In *Harmston*, Plaintiffs' operative complaint alleges that the City and Chief Fong retaliated
 18 against Cohen and Lewis in various specific regards based on their "opposing unlawful practices
 19 under FEHA." (First Amended Complaint ¶ 69) Cohen and Lewis further allege that "in addition to
 20 the enumerated adverse actions above, defendants, and each of them, have engaged in other unlawful
 21 practices against [Cohen and Lewis] which are not yet fully known. When said practices become
 22 known to Plaintiffs, they will seek leave to amend this complaint in those regards." (FAC ¶ 74)

23 In this action, Plaintiffs allege one additional specific incident of alleged unlawful retaliation
 24 arising out of the filing of the *Harmston* administrative charges and lawsuit – the enhanced
 25 supervision of Cohen and Lewis following "as a direct result of their participation in the *Harmston*
 26 litigation." (Complaint, ¶¶ 10-13). An assignment to a single Judge would conserve judicial
 27
 28

resources and promote an efficient determination of the actions because all overlapping, disputed matters of law could be resolved by a single Judge.

This Notice is being served on all parties in the actions.

Dated: December 20, 2007

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